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Preparatory Committee established by General Assembly resolution 69/292: Development of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

Fourth session

New York, 10-21 July 2017

Report of the Preparatory Committee established by General Assembly resolution 69/292: Development of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

I. Introduction

1. In its resolution 69/292 of 19 June 2015, the General Assembly decided to develop an international legally binding instrument under the United Nations Convention on the Law of the Sea (the Convention) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. To that end, the Assembly decided to establish, prior to holding an intergovernmental conference, a preparatory committee, open to all States Members of the United Nations, members of the specialized agencies and parties to the Convention, with others invited as observers in accordance with past practice of the United Nations, to make substantive recommendations to the Assembly on the elements of a draft text of an international legally binding instrument under the Convention, taking into account the various reports of the Co-Chairs on the work of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.[1]

2. The General Assembly also decided that the Preparatory Committee would start its work in 2016 and, by the end of 2017, report to it on its progress, and that the Assembly, before the end of its seventy-second session, and taking into account the aforementioned report of the Preparatory Committee, would decide on the convening and on the starting date of an intergovernmental conference, under the auspices of the United Nations, to consider the recommendations of the Preparatory

[1] See A/61/65, A/63/79 and Corr.1, A/65/68, A/66/119, A/67/95, A/68/399, A/69/82, A/69/177 and A/69/780.

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Committee on the elements and to elaborate the text of an international legally binding instrument under the Convention.

3. The General Assembly recognized the desirability that any legally binding instrument relating to marine biological diversity of areas beyond national jurisdiction under the Convention would secure the widest possible acceptance, and for that reason, decided that the Preparatory Committee should exhaust every effort to reach agreement on substantive matters by consensus. It also recognized the importance of proceeding efficiently in the Preparatory Committee on the development of the elements of a draft text of an international legally binding instrument under the Convention, and recognized further that any elements where consensus was not attained, even after exhausting every effort, might also be included in a section of the recommendations of the Preparatory Committee to the General Assembly.

4. The General Assembly decided that negotiations should address the topics identified in the package agreed in 2011 (see resolution 66/231), namely the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, in particular, together and as a whole, marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments and capacity-building and the transfer of marine technology.

5. It further recognized that the process should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, and that neither participation in the negotiations nor their outcome might affect the legal status of non-parties to the Convention or any other related agreements with regard to those instruments, or the legal status of parties to the Convention or any other related agreements with regard to those instruments.

6. In accordance with paragraph 6 of resolution 69/292, substantive secretariat support was provided to the Preparatory Committee by the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the Secretariat.

II. Organizational matters

A. Sessions of the Preparatory Committee

7. Pursuant to General Assembly resolution 69/292, in which the Assembly decided that the Preparatory Committee should meet for no less than two sessions of a duration of 10 working days each in 2016 and 2017, the Secretary-General convened the first and second sessions of the Preparatory Committee from 28 March to 8 April 2016 and from 26 August to 9 September 2016, respectively, at United Nations Headquarters. Pursuant to resolution 71/257, the third session of the Preparatory Committee was convened by the Secretary-General from 27 March to 7 April 2017 and the fourth session from 10 to 21 July 2017 at United Nations Headquarters.

B. Election of officers

8. By a letter dated 4 September 2015 addressed to Member States, Sam Kahamba Kutesa, President of the General Assembly at its sixty-ninth session, in accordance with paragraph 1(d) of resolution 69/292, appointed Eden Charles, Deputy Permanent Representative of Trinidad and Tobago and Chargé d'affaires a.i. of the Permanent Mission of Trinidad and Tobago to the United Nations, as Chair of the Preparatory Committee.

9. At its first session, in accordance with paragraph 1(e) of resolution 69/292, in which the General Assembly decided that the Preparatory Committee should elect a bureau consisting of two members from each regional group, and that those

10 members should assist the Chair on procedural matters in the general conduct of his or her work, the Preparatory Committee elected a bureau consisting of the following members: Mohammed Atlassi (Morocco), Thembile Ilphus Joyini (South Africa), Ma Xinmin (China), Kaitaro Nonomura (Japan), Konrad Marciniak (Poland), Maxim V. Musikhin (Russian Federation), Javier Gorostegui Obanoz (Chile),
Gina Guillén-Grillo (Costa Rica), Antoine Misonne (Belgium) and Giles Norman (Canada).

10. At its second session, the Preparatory Committee elected Jun Hasebe (Japan) and Catherine Boucher (Canada) as members of the bureau, replacing Kaitaro Nonomura and Giles Norman, who had resigned from their positions as bureau members. The Preparatory Committee further elected Margo Deiye (Nauru) to serve as a member of the bureau from 28 October 2016 onwards in light of an agreement reached in the Asia-Pacific Group to share membership on the bureau.

11. By a letter dated 24 January 2017, Peter Thomson, President of the General Assembly at its seventy-first session, informed Member States that Eden Charles had indicated that he would no longer be in a position to serve as Chair of the Preparatory Committee. He further stated that, following consultations with Member States, he had, in accordance with paragraph 1(d) of resolution 69/292, appointed Carlos Sergio Sobral Duarte, Deputy Permanent Representative of Brazil to the United Nations, as Chair of the Preparatory Committee.

12. At its third session, in accordance with paragraph 1(e) of General Assembly resolution 69/292, and in light of an agreement reached in the Group of Latin American and Caribbean States, the Preparatory Committee elected Pablo Adrian Arrocha Olabuenaga (Mexico) and José Luis Fernandez Valoni (Argentina) as members of the bureau in replacement of Javier Gorostegui Obanoz and Gina Guillén-Grillo. In the light of information received from Malaysia as Chair of the Asia-Pacific Group and in accordance with the agreement reached in that group, the Preparatory Committee further elected Jun Hasebe (Japan) to serve as a member of the bureau from 28 May 2017, replacing Ma Xinmin, whose resignation from the bureau was to take effect on 27 May 2017.

C. Documentation

13. In its resolution 69/292, the General Assembly recognized that, with respect to documentation, any documents of the Preparatory Committee other than the agenda, the programme of work and the report of the Preparatory Committee should be considered informal working documents. The list of official documents before the Preparatory Committee at its sessions is annexed to the present report.

14. In addition, with a view to assisting the proceedings, the Chair prepared a number of informal documents under his responsibility (see paras. 21, 26 and 32 below), including the Chair's overview of the first, second and third sessions and a streamlined non-paper on elements of a draft text of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.[2]

15. At the invitation of the Chair, delegations also submitted views on the elements of a draft text, which were made available on the website of the Division for Ocean Affairs and the Law of the Sea.[2]

[2] Available from www.un.org/depts/los/biodiversity/prepcom.htm.

D. Proceedings of the sessions of the Preparatory Committee

16. In its resolution 69/292, the General Assembly decided that, except as provided for in subparagraph 1(i) of that resolution, in which the Assembly recognized the importance of proceeding efficiently in the Preparatory Committee on the development of the elements of a draft text of an international legally binding instrument under the Convention, and recognized further that any elements where consensus was not attained, even after exhausting every effort, might also be included in a section of the recommendations of the Preparatory Committee, the rules relating to the procedure and the established practice of the committees of the General Assembly would apply to the procedure of the Preparatory Committee, and that, for the meetings of the Preparatory Committee, the participation rights of the international organization that was a party to the Convention would be as in the Meeting of States Parties to the Convention and that that provision would constitute no precedent for all meetings to which General Assembly resolution 65/276 of 3 May 2011 was applicable.

1. First session

17. At the 1st meeting of the Preparatory Committee, on 28 March 2016, the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel made a statement. The Preparatory Committee adopted the agenda of the session as contained in document AC.287/2016/PC.1/L.1 and agreed to proceed on the basis of the provisional programme of work contained in document A/AC.287/2016/PC.1/L.2.

18. The Preparatory Committee held 15 plenary meetings at its first session. Representatives of 99 States Members of the United Nations, two non-member States, five United Nations programmes, funds and offices, four specialized agencies and related organizations of the United Nations system, eight intergovernmental organizations and 17 non-governmental organizations attended the meeting.

19. At its plenary meetings the Preparatory Committee heard general statements and considered the following issues: scope of an international legally binding instrument and its relationship with other instruments; guiding approaches and principles of an international legally binding instrument; marine genetic resources, including questions on the sharing of benefits; measures such as area-based management tools, including marine protected areas; environmental impact assessments; and capacity-building and the transfer of marine technology. The plenary also discussed and approved a road map for the second session.

20. Informal working group sessions were also convened and facilitated as follows: Carlos Duarte (Brazil) for the informal working group on marine genetic resources, including questions on the sharing of benefits; John Adank (New Zealand) for the informal working group on measures such as area-based management tools, including marine protected areas; René Lefeber (Netherlands) for the informal working group on environmental impact assessments; and Rena Lee (Singapore) for the informal working group on capacity-building and the transfer of marine technology.

21. In accordance with the road map discussed and approved by the plenary, following the first session, the Chair prepared an overview of the session. The Chair also prepared indicative suggestions of clusters of issues and questions to assist further discussions in the informal working groups at the second session of the Preparatory Committee.[2]

2. Second session

22. At the 16th meeting of the Preparatory Committee, on 26 August 2016, the Assistant Secretary-General for Legal Affairs made a statement. The Preparatory Committee adopted the agenda as contained in document A/AC.287/2016/PC.2/L.1

and agreed to proceed on the basis of the provisional programme of work contained in document A/AC.287/2016/PC.2/L.2.

23. The Preparatory Committee held 13 plenary meetings at its second session. Representatives of 116 States Members of the United Nations, three non-member States, six United Nations programmes, funds and offices, and five specialized agencies and related organizations of the United Nations system of the United Nations, nine intergovernmental organizations and 22 non-governmental organizations attended the session.

24. At its plenary meetings the Preparatory Committee considered the following issues: marine genetic resources, including questions on the sharing of benefits; measures such as area-based management tools, including marine protected areas; environmental impact assessments; capacity-building and the transfer of marine technology; and cross-cutting issues. The plenary also discussed and approved a road map for the third session.

25. Informal working group sessions were also convened and facilitated as follows: Eden Charles (Trinidad and Tobago)[3] for the informal working group on marine genetic resources, including questions on the sharing of benefits; John Adank (New Zealand) for the informal working group on measures such as area-based management tools, including marine protected areas; René Lefeber (Netherlands) for the informal working group on environmental impact assessments; Rena Lee (Singapore) for the informal working group on capacity-building and the transfer of marine technology; and the Chair of Preparatory Committee, Eden Charles (Trinidad and Tobago), for the informal working group on cross-cutting issues.

26. In accordance with the road map discussed and approved by the plenary, following the second session, the Chair prepared an overview of the session. The Chair also prepared the Chair's non-paper on elements of a draft text of an international legally-binding instrument under the United Nations Convention on the Law of the Sea and a supplement to that paper.[2]

3. Third session

27. At the 29th meeting of the Preparatory Committee, on 27 March 2017, the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel made a statement. The Preparatory Committee adopted the agenda as contained in document A/AC.287/2017/PC.3/L.1 and agreed to proceed on the basis of the provisional programme of work contained in document A/AC.287/2017/PC.3/L.2.

28. The Preparatory Committee held nine plenary meetings at its third session. Representatives of 147 States Members of the United Nations, two non-member States, five United Nations programmes, funds and offices, four specialized agencies and related organizations of the United Nations system, 14 intergovernmental organizations and 19 non-governmental organizations attended the session.

29. The Co-Chair of the Ad Hoc Working Group of the Whole on the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects, introduced the advance and unedited text of the Technical Abstract of the First Global Integrated Marine Assessment on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, under item 7, "Other matters". Under this item, Peter Thomson, President of the General Assembly at its seventy-first session, also addressed the Preparatory Committee.

30. At its plenary meetings the Preparatory Committee considered the following issues: marine genetic resources, including questions on the sharing of benefits;

[3] The Chair facilitated the informal working group in the light of the unavailability of Carlos Duarte

measures such as area-based management tools, including marine protected areas; environmental impact assessments; capacity-building and the transfer of marine technology; and cross-cutting issues. The plenary also discussed and approved a road map for the fourth session.

31. Informal working group sessions were also convened and facilitated as follows: Janine Elizabeth Coye-Felson (Belize)[4] for the informal working group on marine genetic resources, including questions on the sharing of benefits; Alice Revell (New Zealand)[5] for the informal working group on measures such as area-based management tools, including marine protected areas; René Lefeber (the Netherlands) for the informal working group on environmental impact assessments; Rena Lee (Singapore) for the informal working group on capacity-building and the transfer of marine technology; and the Chair of the Preparatory Committee, Carlos Duarte, for the informal working group on cross-cutting issues.

32. In accordance with the road map discussed and approved by the plenary, following the third session, the Chair prepared an overview of the session. The Chair also prepared indicative suggestions to assist the Preparatory Committee in developing recommendations to the General Assembly on the elements of a draft text of an international legally binding instrument under the United Nations Convention on the Law of the Sea, as well as a streamlined non-paper on elements of a draft text of an international legally-binding instrument under the United Nations Convention on the Law of the Sea.[2]

4. Fourth session

33. At the 38th meeting of the Preparatory Committee, on 10 July 2017, the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel made a statement. The Committee adopted the provisional agenda as contained in document A/AC.287/2017/PC.4/L.1 and agreed to proceed on the basis of the proposed programme of work contained in document A/AC.287/2017/PC.4/L.2.

34. The Preparatory Committee held 10 plenary meetings at its fourth session. Representatives of 131 States Members of the United Nations, two non-member States, two United Nations programmes, funds and offices, nine specialized agencies and related organizations of the United Nations system, 10 intergovernmental organizations and 23 non-governmental organizations attended the session.

35. At its plenary meetings the Preparatory Committee heard general statements and considered the development of substantive recommendations on the elements of a draft text of an international legally binding instrument under the United Nations Convention on the Law of the Sea (see para. 38 below). It also considered the report of the Preparatory Committee (see para. 40 below).

36. During the first week, informal working group sessions were also convened and facilitated as follows: Janine Elizabeth Coye-Felson (Belize) for the informal working group on marine genetic resources, including questions on the sharing of benefits; Alice Revell (New Zealand) for the informal working group on measures such as area-based management tools, including marine protected areas; René Lefeber (Netherlands) for the informal working group on environmental impact assessments; Rena Lee (Singapore) for the informal working group on capacity-building and the transfer of marine technology; and the Chair of the Preparatory Committee, Carlos Duarte (Brazil), for the informal working group on cross-cutting issues.

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[4] In replacement of Carlos Duarte (Brazil), owing to his new role as Chair of the Preparatory Committee

[5] In replacement of John Adank (New Zealand), who had informed the Chair that he was no longer in a position to serve as facilitator

37. During the plenary sessions in the second week, many delegations proposed to include as part of the substantive recommendations to the General Assembly that an intergovernmental conference be convened in 2018. Some delegations also proposed that the conference should have at least four rounds of negotiations, each held for a period of two weeks during 2018 and 2019, with full conference services. Some delegations suggested that the rules of procedure of the General Assembly should apply mutatis mutandis to the conference. Other delegations stressed that discussions on whether, when and how to convene an intergovernmental conference should be left to the General Assembly, and that the substantive recommendations of the Preparatory Committee should not contain any suggestions in that regard in order not to prejudge such discussions in the Assembly. A delegation was of the view that additional sessions of the Preparatory Committee might be needed before moving towards an intergovernmental conference.

III. Recommendations of the Preparatory Committee

38. At its 47th meeting, on 21 July 2017, the Preparatory Committee adopted, by consensus, the following recommendations.

The Preparatory Committee, having met in accordance with General Assembly resolution 69/292 of 19 June 2015, recommends to the General Assembly:

(a) That the elements contained in sections A and B below be considered with a view to the development of a draft text of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. Sections A and B do not reflect consensus. Section A includes non-exclusive elements that generated convergence among most delegations. Section B highlights some of the main issues on which there is divergence of views. Sections A and B are for reference purposes because they do not reflect all options discussed. Both sections are without prejudice to the positions of States during the negotiations;

(b) That the General Assembly take a decision, as soon as possible, on the convening of an intergovernmental conference, under the auspices of the United Nations, to consider the recommendations of the Preparatory Committee on the elements and to elaborate the text of an international legally binding instrument under the Convention.

Section A

I. Preambular elements

The text would set out broad contextual issues, such as:

- A description of the considerations that led to the development of the instrument, including key concerns and issues
- Recognition of the central role of the Convention and the role of other existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
- Recognition of the need to enhance cooperation and coordination for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
- Recognition of the need for assistance so that developing countries, in particular geographically disadvantaged States, least developed countries, landlocked developing countries and small island developing States, as well as coastal African States, can participate effectively in the conservation and

sustainable use of marine biological diversity of areas beyond national jurisdiction

- Recognition of the need for the comprehensive global regime to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
- An expression of conviction that an agreement for the implementation of the relevant provisions of the Convention would best serve these purposes and contribute to the maintenance of international peace and security
- An affirmation that matters not regulated by the Convention, its Implementing Agreements or the instrument continue to be governed by the rules and principles of general international law.

II. General elements

1. Use of terms[6]

The text would provide definitions of key terms, bearing in mind the need for consistency with those contained in the Convention and other relevant legal instruments and frameworks.

2. Scope of application

2.1 Geographical scope

The text would state that the instrument applies to areas beyond national jurisdiction.

It would state that the rights and jurisdiction of coastal States over all areas under their national jurisdiction, including the continental shelf within and beyond 200 nautical miles and the exclusive economic zone, shall be respected.

2.2 Material scope

The text would address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, in particular, together and as a whole, marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments and capacity-building and the transfer of marine technology.

It could set out exclusions from the scope of application of the instrument, and address, consistent with the Convention, issues relating to sovereign immunity.

3. Objective(s)

The text would set out that the objective of the instrument is to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction through effective implementation of the Convention.

It could further set out additional objectives, if agreed, such as furthering international cooperation and coordination, to ensure the achievement of the overall objective of conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

4. Relationship to the Convention and other instruments and frameworks and relevant global, regional and sectoral bodies

With regard to the relationship to the Convention, the text would state that nothing in the instrument shall prejudice the rights, jurisdiction and duties of States under

[6] Some specific definitions of relevance to only one part of the instrument could be included under the respective parts.

the Convention. It would further state that the instrument shall be interpreted and applied in the context of and in a manner consistent with the Convention.

The text would state that the instrument would promote greater coherence with and complement existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies. It would also state that the instrument should be interpreted and applied in a manner which would not undermine these instruments, frameworks and bodies.

The text could recognize that the legal status of non-parties to the Convention or any other related agreements with regard to those instruments would not be affected.

III. Conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

1. General principles and approaches[7]

The text would set out the general principles and approaches guiding the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

Possible general principles and approaches could include:

- Respect for the balance of rights, obligations and interests enshrined in the Convention
- Due regard as reflected in relevant provisions of the Convention
- Respect for the rights and jurisdiction of coastal States over all areas under their national jurisdiction, including the continental shelf within and beyond 200 nautical miles and the exclusive economic zone
- Respect for the sovereignty and territorial integrity of all States
- Use of marine biological diversity of areas beyond national jurisdiction for peaceful purposes only
- Promotion of both the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
- Sustainable development
- International cooperation and coordination, at all levels, including north-south, south-south, and triangular cooperation
- Relevant stakeholders engagement
- Ecosystem approach
- Precautionary approach
- Integrated approach
- Science-based approach, using the best available scientific information and knowledge, including traditional knowledge
- Adaptive management
- Building resilience to the effects of climate change
- Duty not to transform one type of pollution into another consistent with the Convention
- Polluter-pays principle
- Public participation
- Transparency and availability of information

[7] Some of these principles and approaches would be included in a separate article and some in the preamble

- Special requirements of small islands developing States and least developed countries, including avoiding transferring, directly or indirectly, a disproportionate burden of conservation action onto developing countries
- Good faith.

2. International cooperation

The text would set out the obligation of States to cooperate for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, and elaborate on the content and modalities of this obligation.

3. Marine genetic resources, including questions on the sharing of benefits

3.1 Scope[8]

The text would set out the geographical and material scope of application of this section of the instrument.

3.2 Access and benefit-sharing

3.2.1. Access

The text would address access.

3.2.2. Sharing of benefits

(i) Objectives

The text would set out that the objectives of benefit-sharing are:

- Contributing to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
- Building capacity of developing countries to access and use marine genetic resources of areas beyond national jurisdiction.

It could further set out additional objectives, if agreed.

(ii) Principles and approaches guiding benefit-sharing[9]

The text would set out the principles and approaches guiding benefit-sharing, such as:

- Being beneficial to current and future generations
- Promoting marine scientific research and research and development.

(iii) Benefits

The text would set out the types of benefits that could be shared.

(iv) Benefit-sharing modalities

The text would set out modalities for the sharing of benefits, taking into account existing instruments and frameworks, for example it could make provision for a clearing-house mechanism with regard to the sharing of benefits.[10]

3.2.3. Intellectual property rights

The text could set out the relationship between the instrument and intellectual property rights.

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[8] The scope could also be included in an overarching section on scope at the beginning of the instrument (see, for example, part II 2 above).

[9] The principles could also be included in an overarching section on principles and approaches at the beginning of the instrument (see, for example, part III 1 above).

[10] The functions of a clearing-house mechanism could be set out in a stand-alone section of the instrument dedicated to the clearing-house mechanism (see, for example, part V below) or in this section.

3.3. Monitoring of the utilization of marine genetic resources of areas beyond national jurisdiction

The text could address monitoring of the utilization of marine genetic resources of areas beyond national jurisdiction.

4. Measures such as area-based management tools, including marine protected areas

4.1 Objectives of area-based management tools, including marine protected areas

The text would set out objectives of area-based management tools, including marine protected areas, in areas beyond national jurisdiction for the conservation and sustainable use of marine biological diversity.

4.2 Relationship to measures under relevant instruments, frameworks and bodies

The text would set out the relationship between measures under the instrument and measures under existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, for the purpose of coherence and coordination of efforts.

The text would affirm the importance of enhanced cooperation and coordination between relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, with regard to area-based management tools, including marine protected areas, without prejudice to their respective mandates.

The text would also address the relationship between measures under the instrument and those established by adjacent coastal States, including issues of compatibility, without prejudice to the rights of coastal States.

4.3 Process in relation to area-based management tools, including marine protected areas

Taking into account the various types of area-based management tools, including marine protected areas, the text would set out the process in relation to area-based management tools, including marine protected areas, and the relevant roles and responsibilities, on the basis of the approach that will be developed.

4.3.1. Identification of areas

The text would set out that the process for identification of areas within which protection may be required would be based on the best available scientific information, standards and criteria, including:

- Uniqueness
- Rarity
- Special importance for life history stages of species
- Importance for threatened, endangered or declining species and/or habitats
- Vulnerability
- Fragility
- Sensitivity
- Biological productivity
- Biological diversity
- Representativeness
- Dependency
- Naturalness

- Connectivity
- Ecological processes
- Economic and social factors.

4.3.2 Designation process

(i) *Proposal*

The text would contain provisions on proposals related to area-based management tools, including marine protected areas.

When considering marine protected areas, and other area-based management tools where relevant, the elements of the proposal should include:

- Geographic/spatial description
- Threats/vulnerabilities and values
- Ecological factors related to identification criteria
- Scientific data concerning the standards and criteria for the identification of the area
- Conservation and sustainable use objectives
- The role of relevant global, regional and sectoral bodies
- Existing measures in the area or areas adjacent to it
- Specific human activities in the area
- Socio-economic considerations
- A draft management plan
- Monitoring, research and review plan.

(ii) *Consultation on and assessment of the proposal*

The text would set out a process for coordination and consultations on the proposal with relevant global, regional and sectoral bodies, all States, including adjacent coastal States, and other relevant stakeholders, including scientists, industry, civil society, traditional knowledge holders and local communities.

It would also set out guidance for a scientific assessment of the proposal.

(iii) *Decision-making*

The text would set out how decisions on matters related to area-based management tools, including marine protected areas, would be made, including who would make the decision and on what basis.

The text would address the question of the involvement of coastal States adjacent to an area for which area-based management tools, including marine protected areas, are proposed.

4.4 Implementation

The text would set out the responsibility of Parties to the instrument related to the measures for a particular area.

4.5 Monitoring and review

The text would set out provisions for assessing the effectiveness of area-based management tools, including marine protected areas, and subsequent follow-up action, bearing in mind the need for an adaptive approach.

5. Environmental impact assessments

5.1 Obligation to conduct environmental impact assessments

Drawing from article 206 of the Convention and customary international law, the text would set out the obligation for States to assess the potential effects of planned activities under their jurisdiction or control in areas beyond national jurisdiction.

5.2 Relationship to environmental impact assessment processes under relevant instruments, frameworks and bodies

The text would set out the relationship to environmental impact assessment processes under relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.

5.3 Activities for which an environmental impact assessment is required

The text would address the thresholds and criteria for undertaking environmental impact assessments in respect of areas beyond national jurisdiction.

5.4 Environmental impact assessment process

The text would address the procedural steps of an environmental impact assessment process, such as:

- Screening
- Scoping
- Impact prediction and evaluation, using the best available scientific information, including traditional knowledge
- Public notification and consultation
- Publication of reports and public availability of reports
- Consideration of reports
- Publication of decision-making documents
- Access to information
- Monitoring and review.

The text would address decision-making following the environmental impact assessment, including on whether an activity would proceed or not and under which conditions.

The text would address the question of involvement of adjacent coastal States.

5.5 Content of environmental impact assessment reports

The text would address the required content of environmental impact assessment reports, such as:

- Description of the planned activities
- Description of reasonable alternatives to the planned activities, including non-action alternatives
- Description of scoping results
- Description of the potential effects of the planned activities on the marine environment, including cumulative impacts and any transboundary impacts
- Description of the environment likely to be affected
- Description of any socio-economic impacts
- Description of any measures for avoiding, preventing and mitigating impacts

- Description of any follow-up actions, including any monitoring and management programmes
- Uncertainties and gaps in knowledge
- A non-technical summary.

5.6 Monitoring, reporting and review

Based on and consistent with articles 204 to 206 of the Convention, the text would set out the obligation to ensure that the impacts of authorized activities in areas beyond national jurisdiction are monitored, reported and reviewed.

The text would address the question of information to adjacent coastal States.

5.7 Strategic environmental assessments

The text could address strategic environmental assessments.[11]

6. Capacity-building and transfer of marine technology[12]

6.1 Objectives of capacity-building and transfer of marine technology

The text would address the objectives of capacity-building and the transfer of marine technology, in supporting the achievement of conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction by developing and strengthening the capacity of States which may need and request it, particularly developing States, in accordance with article 266, paragraph 2 of the Convention, to assist them to fulfil their rights and obligations under the instrument.

The text should recognize the special requirements under the instrument of developing countries, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States and small island developing States, as well as coastal African States.

6.2 Types of and modalities for capacity-building and transfer of marine technology

Drawing on existing instruments, such as the Convention and the Criteria and Guidelines on Transfer of Marine Technology of the Intergovernmental Oceanographic Commission, the text could include an indicative, non-exhaustive list, which could be developed at a later stage, of broad categories of types of capacity-building and transfer of marine technology, such as:

- Scientific and technical assistance, including with regard to marine scientific research for example through joint research cooperation programmes
- Education and training of human resources, including through workshops and seminars
- Data and specialized knowledge.

The text would also provide modalities for capacity-building and transfer of marine technology, including possibly for such modalities to:

- Be country-driven and responsive to periodically assessed needs and priorities
- Develop and strengthen human and institutional capacities
- Be long term and sustainable and
- Develop marine scientific and technological capacity of States in accordance with Parts XIII and XIV of the Convention.

[11] This could be considered in a different section of the instrument, for example, in the section on area-based management tools, including marine protected areas.

[12] Capacity-building and transfer of marine technology could feature in a dedicated section or be mainstreamed across the other sections.

The text would elaborate on forms of cooperation and assistance in relation to marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, and environmental impact assessments.

It would make provision for a clearing-house mechanism to perform functions with regard to capacity-building and transfer of marine technology, taking into account the work of other organizations.[10]

6.3 Funding

Taking into account existing mechanisms, the text would address provision of funding and resources. Related questions on the sustainability, predictability and accessibility of such funding and resources could also be addressed.

6.4 Monitoring and review

The text would address the issue of monitoring and review of the effectiveness of capacity-building and transfer of marine technology activities, and possible follow-up action.

IV. Institutional arrangements

The text would set out institutional arrangements, taking into account the possibility of using existing bodies, institutions and mechanisms. Possible institutional arrangements could include the following.

1. Decision-making body/forum

The text would set out an institutional framework for decision-making, as well as the functions that could be performed.

Possible functions that a decision-making body/forum would perform in support of the implementation of the instrument could include:

- Adopting its rules of procedure
- Reviewing implementation of the instrument
- Exchange of information relevant to the implementation of the instrument
- Promoting coherence among efforts towards the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
- Promoting cooperation and coordination, including with relevant global, regional and sectoral bodies towards the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
- Making decisions and recommendations related to the implementation of the instrument
- Establishing subsidiary bodies as necessary for the performance of its functions
- Other functions identified in the instrument.

2. Scientific/technical body

The text would set out an institutional framework for scientific advice/information.

It would also set out the functions that such an institutional framework would perform, such as providing advice to the decision-making body/forum specified in the instrument and such other functions as may be determined by the decision-making body/forum.

3. Secretariat

The text would set out an institutional framework for secretariat functions, such as:

- Providing administrative and logistical support
- Reporting to States parties on matters related to the implementation of the instrument and developments related to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction as requested by the Parties
- Convening and servicing the meetings of the decision-making body/forum, and any other bodies as may be established by the decision-making body/forum
- Circulating information relating to the implementation of the instrument
- Ensuring the necessary coordination with the secretariats of other relevant international bodies
- Providing assistance for the implementation of the instrument as mandated by the decision-making body/forum
- Performing other secretariat functions specified in the instrument and such other functions as may be determined by the decision-making body/forum.

V. Clearing-house mechanism

The text would set out modalities to facilitate the exchange of information relevant to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction for the implementation of the instrument.

It would make provision for mechanisms such as data repositories or a clearing-house mechanism.

Possible functions of a clearing-house mechanism could include:

- Dissemination of information, data and knowledge resulting from research relating to marine genetic resources of areas beyond national jurisdiction, information on traditional knowledge associated with marine genetic resources of areas beyond national jurisdiction, as well as other relevant information related to marine genetic resources
- Dissemination of information relating to area-based management tools, including marine protected areas, such as scientific data, follow-up reports and related decisions taken by competent bodies
- Dissemination of information on environmental impact assessments, such as by providing a central repository for reports of environmental impact assessments, traditional knowledge, best environmental management practices and cumulative impacts
- Dissemination of information relating to capacity-building and transfer of marine technology, including facilitation of technical and scientific cooperation; information on research programmes, projects and initiatives; information on needs related to capacity-building and transfer of marine technology and available opportunities; and information on funding opportunities.

VI. Financial resources and issues

The text would address financial issues relating to the operation of the instrument.

VII. Compliance

The text would address issues of compliance.

VIII. Settlement of disputes

Drawing on existing dispute settlement provisions, such as those of the Charter of the United Nations and the Convention, the text would set out the obligation to settle disputes by peaceful means as well as the need to cooperate to prevent disputes.

It would also set out the modalities for settling disputes concerning the interpretation or application of the instrument.

IX. Responsibility and liability

The text could address issues relating to responsibility and liability.

X. Review

The text could set out that the effectiveness of the instrument in achieving its objectives would be periodically reviewed.

XI. Final clauses

The text would set out the final clauses of the instrument.

With a view to achieving universal participation, the instrument would be consistent with the relevant provisions of the Convention on this matter, including regarding international organizations.

The text could address the issue of how not to prejudice the positions of States on land and maritime disputes.

Section B

With regard to the common heritage of mankind and the freedom of the high seas, further discussions are required.

With regard to marine genetic resources, including the question of the sharing of benefits, further discussions are required on whether the instrument should regulate access to marine genetic resources; the nature of these resources; what benefits should be shared; whether to address intellectual property rights; and whether to provide for the monitoring of the utilization of marine genetic resources of areas beyond national jurisdiction.

With regard to measures such as area-based management tools, including marine protected areas, further discussions are required on the most appropriate decision-making and institutional set up, with a view to enhancing cooperation and coordination, while avoiding undermining existing legal instruments and frameworks and the mandates of regional and/or sectoral bodies.

With regard to environmental impact assessments, further discussions are required on the degree to which the process should be conducted by States or be "internationalized", as well as on whether the instrument should address strategic environmental impact assessments.

With regard to capacity-building and the transfer of marine technology, further discussions are required on the terms and conditions for the transfer of marine technology.

Further discussions are required on institutional arrangements and the relationship between the institutions established under an international instrument and relevant global, regional and sectoral bodies. A related issue that would also require further attention is how to address monitoring, review and compliance.

With respect to funding, further discussions are required on the scope of the financial resources required and whether a financial mechanism should be established.

Further discussions are also required on settlement of disputes and responsibility and liability.

IV. Other matters

39. In paragraph 5 of its resolution 69/292, the General Assembly requested the Secretary-General to establish a special voluntary trust fund for the purpose of assisting developing countries, in particular the least developed countries, landlocked developing countries and small island developing States, in attending the meetings of the Preparatory Committee and the intergovernmental conference and invited Member States, international financial institutions, donor agencies, intergovernmental organizations, non-governmental organizations and natural and juridical persons to make financial contributions to the voluntary trust fund. The Secretariat informed the Preparatory Committee of the status of the trust fund at sessions of the Preparatory Committee. The following States made contributions to the voluntary trust fund: Estonia, Finland, Ireland, the Netherlands and New Zealand.

V. Adoption of the report of the Preparatory Committee

40. At the 46th meeting, on 20 July 2017, the Chair introduced the draft report of the Preparatory Committee.

41. At the 47th meeting, on 21 July 2017, the European Union and its member States requested that the report indicate that, in their view, the third paragraph of part II.4 of section A of the recommendations is not an element that generated convergence among most delegations.

42. At the same meeting, the Preparatory Committee adopted its draft report as amended.

Annex

List of documents

A/AC.287/2016/PC.1/1	Agenda of the first session
A/AC.287/2016/PC.1/L.1	Provisional agenda of the first session
A/AC.287/2016/PC.1/L.2	Provisional programme of work for the first session
A/AC.287/2016/PC.2/1	Agenda of the second session
A/AC.287/2016/PC.2/L.1	Provisional agenda of the second session
A/AC.287/2016/PC.2/L.2	Provisional programme of work for the second session
A/AC.287/2017/PC.3/1	Agenda of the third session
A/AC.287/2016/PC.3/L.1	Provisional agenda of the third session
A/AC.287/2017/PC.3/L.2	Provisional programme of work for the third session
A/AC.287/2017/PC.4/1	Agenda of the fourth session
A/AC.287/2016/PC.4/L.1	Provisional agenda of the fourth session
A/AC.287/2017/PC.4/L.2	Provisional programme of work for the fourth session